



*European Communities
Commission
Background Report*

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ISEC/B54/78

July 27, 1978

PROTECTING CONSUMERS IN DOORSTEP SALES

European Commission defends its proposals

The European Commission recently submitted to the Council of Ministers a proposal for a directive on sales made away from business premises. The measures proposed are designed to give consumers more protection - for example when they buy goods or services from a salesman at the door without themselves having initiated the transaction. (See ISEC/B9/1977).

This proposal was discussed and heavily criticised in the House of Commons on June 28 last. The debate showed some misunderstanding of the basis and the content of the proposal and since the examination of this proposal is continuing in Brussels, the Commission believes that it would be useful at this stage to give some further clarification.

Background and procedure

The European Community's Preliminary Programme for a Consumer Protection and Information Policy was adopted by the Council of Ministers on April 14, 1975. Paragraph 18 states that the protection of consumers' economic interests "..... should be ensured by laws and regulations which are either harmonized at Community level or adopted directly at that level". It is in pursuance of its obligations under this programme that the Commission has put forward the present proposal on sales away from business premises.

Detailed consultations with experts from the administrations of the member states and with the various interested parties took place before the Commission adopted this proposal. During these consultations, successive drafts were prepared, which led to the final draft submitted to the Commission for its approval. It was at all times open to any minister to instruct his experts as to what attitude they should adopt.

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All the elements of the proposed directive are being discussed by the Council working party. Every member state has the right to put its views on the general principles and on the details of the proposal, and to seek the changes which it believes are required. The final decision on the proposal rests with the Council of Ministers.

Aim of the proposal

The proposed directive is aimed at a recognized abuse. When taken by surprise, consumers can be pressurized into purchasing unwanted goods and services. This frequently happens in the case of 'doorstep' sales.

Scope of the proposal

The proposed directive is concerned with contracts between a consumer and a trader, initiated away from business premises.

It would apply, for example, to

- contracts made on the doorstep at the trader's initiative
- contracts made during 'coffee morning' sales promotions.

The proposal provides for a number of exceptions. For example:

- contracts negotiated exclusively at the consumer's initiative
- contracts concerning immovable property
- contracts for a value of less than £10 (15 European units of account)
- foodstuffs and drinks delivered by regular roundsmen (e.g. bread and milk).

Objections raised

Reference to the proposal itself shows that some of the objections raised are not well founded:

- It would not apply to foodstuffs and drinks delivered by regular roundsmen
- emergency services for the stranded motorist would normally not be affected. Where a motorist is a member of an organisation like the AA, he has already made a contract which includes emergency assistance. If he is not a member of such an organisation, he will normally take the initiative of calling a breakdown service to fix his car. In this case, the assistance is not covered by the proposed directive.

If the motorist is approached by a breakdown service, it can be argued that the negotiations for the contract are initiated by the trader. The question then arises: is the breakdown van to

be considered as business premises? The Commission has not specified this: indeed, the definition of business premises is one of the items being discussed by the Council working group.

If the breakdown van is considered as business premises, then the next question is the value of the assistance. If this is less than £10, the proposed directive would not apply.

The Commission takes the view that the principle of the consumer protection measure proposed applies to the purchase of services, as it does to the purchase of goods. It is clear, however, that there is a need for flexibility in relation to emergency services. If the member states agree, the final decision will reflect this.

It is alleged that a hire-purchase contract for a television set would be subject to the proposed directive, for the technical reason that the set is being sold by a finance company, not by the person who displays it in the window. This is not the case. If a trader displays and sells goods and arranges H.P. financing, the contract is negotiated at the purchaser's initiative, and is thus not covered by the proposed directive.

It is alleged that the applications of the proposed directive to the operations of mail order traders in the U.K. would create additional paper work, to the tune of an extra 790 million pieces of paper, with resulting substantial cost increases.

In the case of agency mail-order trading, when an agent calls on the prospective customer, elements of surprise and pressure can be brought to bear. Thus, the general aim of the proposal is relevant in relation to this sector.

The Commission's information is that 95 per cent of agency mail-order trade in the U.K. takes place on credit. U.K. legislation requires a written contract for credit transactions and a notice informing the consumer of his right to a cooling-off period.

The Commission's proposal similarly stipulates that all of the contracts covered must be in writing, and that each contract must include notice of the right of cancellation (which need not necessarily be a separate document). Thus, the application of the proposed directive to U.K. mail-order firms would not, as alleged, give rise to a considerable volume of extra documentation.

The proposed directive stipulates that contracts to a value of less than about £10 would not be subject to the provisions of the directive. It is alleged that this figure is too low, and that, since it is fixed in terms of European units of account, the amount, when expressed in pounds, would be subject to frequent change and would be totally unpredictable.

This is not the case:

The level of the cash limit is one of the elements still being discussed.

The proposal specifically states that the limit would be fixed in European units of account, with the conversion value in national currency being fixed once a year. In this way, the amount would be stable and predictable for periods of at least a year.

Definition of business premises

The definition of business premises is being discussed by the working group in the Council of Ministers. All parties are concerned to ensure that the definition finally adopted is sensible and allows the proposed measure to deal effectively with the problem at hand. Equally, there is a general concern to ensure that the definition is sufficiently flexible to allow member states to incorporate the proposed measure smoothly into national legislation.

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